

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO ENTER INTO AN AMENDED ACCESS AGREEMENT BETWEEN THE CITY OF NORTH LITTLE ROCK AND INDIAN HILLS COMMUNITY CLUB; APPROPRIATING FUNDS; AND FOR OTHER PURPOSES.**

WHEREAS, the Indian Hills Community Club (“IHCC”) was established in 1965 as a non-profit entity, managed by volunteers from the Indian Hills Community, supported by membership fees, and dedicated to providing a recreational facility to the Indian Hills Community; and

WHEREAS, the IHCC owns certain real property and recreational swimming facilities located on Coronado Circle in North Little Rock (the “IHCC Pool”) that are beneficial to citizens of the City; and

WHEREAS, the IHCC has the expertise, knowledge, ability and desire to administer community programs, and Resolution No. 8731 was adopted on January 12, 2015 authorizing a three year Access Agreement with a one-time \$25,000 payment for IHCC to provide membership and programs on a non-discriminatory basis for all citizens of North Little Rock; and

WHEREAS, thereafter IHCC advertised for bids to repair the pool facilities and found that the costs of needed repairs will exceed the original estimate by \$10,000.00, the agreement authorized by Resolution 8731 was not executed by the parties, and IHCC has requested an amended agreement to increase the one-time payment to \$35,000; and

WHEREAS, it is beneficial to the City to have another recreational pool facility available for its residents, and it is in the best interests of the City and its citizens that an amended Access Agreement be entered into with IHCC to increase the one-time payment to \$35,000.00.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into an amended three (3) year Access Agreement between the City of North Little Rock and Indian Hills Community Club, said amended agreement being substantially similar to Exhibit “A” attached hereto.

SECTION 2: That the one-time payment of \$35,000.00 (pursuant to the terms of the amended agreement) is hereby appropriated from Ward 4 Drainage Funds.

SECTION 3: That this Resolution shall be in full force and effect from and after its passage and approval.

PASSED:

APPROVED:

\_\_\_\_\_

Mayor Joe A. Smith

SPONSOR:

ATTEST:

Murry Witcher  
Alderman Murry Witcher

Diane Whitbey, City Clerk

APPROVED AS TO FORM:

C. Jason Carter  
C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	11:07 A.M.	P.M.
By	C. Jason Carter	
DATE	4-7-15	
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas		
RECEIVED BY	[Signature]	

# AMENDED ACCESS AGREEMENT

Between

INDIAN HILLS COMMUNITY CLUB

And

CITY OF NORTH LITTLE ROCK, ARKANSAS

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This agreement (hereinafter called the "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the **INDIAN HILLS COMMUNITY CLUB** (hereinafter referred to as "IHCC") and the **CITY OF NORTH LITTLE ROCK** (hereinafter referred to as the "City") who each may be referred to as a "Party" or as "Parties" collectively.

## W-I-T-N-E-S-S-E-T-H:

**WHEREAS**, the IHCC was established in 1965 as a non-profit entity that is managed by volunteers from the Indian Hills community, supported by membership fees, and dedicated to providing a recreational facility to the Indian Hills community; and

**WHEREAS**, the IHCC owns certain real property and recreational swimming facilities located on Coronado Circle in North Little Rock, Arkansas that are beneficial to citizens of North Little Rock (the "IHCC Pool"); and

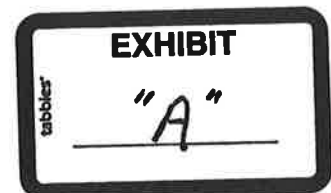
**WHEREAS**, the IHCC has proven expertise, knowledge, ability and desire to administer community programs at the IHCC Pool;

**WHEREAS**, the City desires that membership and programs offered at the IHCC be provided on a non-discriminatory basis for all citizens of North Little Rock.

**NOW, THEREFORE**, in consideration of the mutual and promises set forth herein, and other good and valuable consideration, it is agreed by and between the parties as follows:

### 1. The IHCC agrees:

a) To open and maintain the IHCC Pool for no less than three (3) calendar months of each year this Agreement shall be effective, weather permitting;



b) To allow access and use of the IHCC Pool, as well as all instructional programs conducted at the IHCC Pool, to **all** citizens of North Little Rock upon an equal basis without regard to the location of their residence or any discriminatory factor prohibited under Title VI of the 1964 Civil Rights Act;

c) That no City funds, shall be used to pay the salary of any person;

d) That no later than January 1<sup>st</sup> of each year that this Agreement is effective, the IHCC shall provide an annual financial statement to the Department of Neighborhood Services that summarizes the amount and source of revenues received and the amount and type of expenses paid for the previous year;

e) That IHCC will conduct bidding as required by law before constructing any capital improvements exceeding \$20,000 in value that is paid for by City funds; and

f) That all documents relating to any expense paid for with City funds are subject to the Arkansas Freedom of Information Act and must be available for inspection and copy by the public.

**2. The City agrees** to tender a one-time payment in the amount of thirty-five thousand dollars (\$35,000.00) to the IHCC within thirty (30) days of the execution of this Agreement by both parties.

**3. Term.** The term of this Agreement shall commence on the day when all Parties have executed the same and shall extend for a term of three (3) years, ending at midnight on the \_\_\_\_\_ day of \_\_\_\_\_, 2018. This Agreement may be extended if agreed to by both Parties in writing.

**4. Assignment.** The IHCC shall neither assign nor delegate this Agreement, in whole or part, to any person or entity without the express written approval of the City.

**5. Breach and Termination.** This Agreement may be terminated, with or without cause, by either party upon thirty (30) days' notice. If this Agreement is terminated by the IHCC, the IHCC shall return to the City a pro-rated amount of the fee received under paragraph 2 (For example: If IHCC terminates after 13 months, the IHCC shall return 23/36ths of the fee received.) If this Agreement is terminated by the City without cause, the City shall not be entitled to recover any fee which has been paid. If this Agreement is terminated by the City based on breach of any condition in this Agreement by the IHCC, the City shall be entitled to recover the pro-rated amount of the fee paid under paragraph 2 from the time of breach, as well as any and all attorney fees and collection costs. The remedies in this paragraph are exclusive and the Parties

expressly waive their respective rights to any other cause of action based on this agreement.

**6. No Joint Venture.** This Agreement does not constitute a joint venture of the Parties. IHCC shall remain the sole Party liable for any and all costs related to the ownership and operation of the IHCC Pool.

**7. Succession.** This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

**8. Severability.** Each paragraph of this agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or sub-paragraph is invalid or unenforceable for any reason, all remaining paragraphs and sub-paragraphs will remain in full force and effect.

**9. Choice of Law.** This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

**11. Entire Agreement.** This agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**12. Non-waiver.** No delay or failure to exercise any right under this Agreement shall impair any such right or be construed to be a waiver thereof. No waiver shall be effective unless in writing signed by the party waiving. A waiver of a right on one occasion shall not be deemed to be waiver of such right on any other occasion. A waiver of a right on one occasion shall not be deemed to be a waiver of any other right on that occasion.

**13. Modification.** No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Agreement.

**14. Council Approval Required.** This Agreement, nor any provision contained therein, shall become effective unless and until approved by official public vote of the City Council of the City of North Little Rock, Arkansas.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands and seals.

**CITY OF NORTH LITTLE ROCK, AR**

By \_\_\_\_\_  
Joe A. Smith, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Diane Whitbey, City Clerk

[SEAL]

**INDIAN HILLS COMMUNITY CLUB**

By Donna C. Whiting  
Title: Board President  
Date: April 7, 2015

ATTEST:

\_\_\_\_\_  
Secretary